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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 729

ROYAL NETHERLANDS STEAMSHIP COMPANY,

Petitioner,

—against—

STRACHAN SHIPPING COMPANY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above entitled case on June 27, 1966.

Citation to Opinion Below

The opinion of the Court of Appeals (R. 175), printed in Appendix A hereto, *infra,* p. 1a, is reported in 362 F. 2d 691. The District Court did not render an opinion but its judgment (R. 168) is printed in appellant's appendix record in the Court of Appeals (43a), 9 copies of which have been filed herewith.

Jurisdiction

The judgment of the Court of Appeals (R. 185) was entered on June 27, 1966, and is printed in Appendix B hereto, *infra*, p. 8a. A timely petition for rehearing (R. 186) was filed on July 18, 1966, and was denied without opinion by an order (R. 202) entered on August 5, 1966, printed in Appendix C hereto, *infra*, p. 10a.

Questions Presented

1. Are the jury's answers to the interrogatories irreconcilably inconsistent and, if not, did the lower court fail to reconcile the answers, contrary to the Seventh Amendment and decisions of this Court?

2. If some of the jury's answers to the interrogatories are severable and not inconsistent with other answers, and those severable answers support a judgment for petitioner on the special verdict, do the Seventh Amendment and F. R. Civ. P. 49(a) require that judgment be entered for petitioner?

3. If the jury's answers to the interrogatories are irreconcilably inconsistent, should petitioner's motions for a directed verdict or judgment notwithstanding the verdict have been granted under circumstances which call for an exercise of this Court's power of supervision so as to obviate further litigation?

Constitutional Provision and Rule Involved

The constitutional provision involved is the Seventh Amendment which states, in part, that "no fact tried by a jury, shall be otherwise re-examined by any Court of the United States, than according to the rules of the common law." Also involved is Rule 49(a) of the Federal Rules of Civil Procedure, 28 U. S. C. A., which provides, in part, that the "court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court may submit to the jury written questions susceptible of categorical or other brief answer * * *. The court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue."

Statement

Rawlinson, an experienced longshoreman (R. 138) employed as a hook-on man (R. 126) by respondent Strachan, an expert (R. 166) independent contracting stevedore (R. 126), was injured while helping load a forty feet length of pipe (R. 127) from a Houston dock onto a ship owned by petitioner Royal (R. 176). Strachan's manager conceded that Strachan should have been able to load the pipe "without any untoward incident" (R. 130).

The pipe, which lay parallel to the ship (R. 138), was raised off the dock by two ship's winches operated by Strachan's winchmen (R. 177). To keep the pipe from hitting part of the ship's rigging, called "shroud" (R. 152), the hook-on men manually swung one end of the pipe

ninety degrees so the winchmen could pull the pipe aboard perpendicular to the vessel (R. 140).

A rope tag line was tied onto some previously loaded lengths of pipe (R. 139) to enable the hook-on men to swing the pipe around by pulling on the line rather than pushing on the pipe (R. 143). Use of a tag line obviated any need and made it physically impractical for the hook-on men to get between the pipe and the ship (R. 164). Strachan's manager conceded that "it would be safer" to use a tag line to load the pipe (R. 132-133). It was Rawlinson's job to put tag lines on the pipe (R. 162). There was no tag line on the pipe which crushed Rawlinson while he was between the pipe and the ship, trying to push one end of the pipe around (R. 164).

It was customary to have a signalman in each gang of longshoremen to help the winchmen load the cargo (R. 129-130, 148). Strachan's contract Safety Rule 14 provided that: "From a safety standpoint, a winch driver shall take signals or orders from but one man" (R. 119). There was no signalman on duty while the pipe which struck Rawlinson was being loaded (R. 150). Strachan's manager conceded that this was "an unsafe practice" (R. 131-132).

One of the hook-on men signaled the winchmen to raise the pipe off the dock (R. 156). Thereafter, the winchmen did not and, the jury found (R. 179), could not see whether Rawlinson was out of the way (R. 155, 162-163). Strachan's contract Safety Rule 24 cautioned that "workmen should keep clear of load being lowered or hoisted" (R. 119) and Strachan's superintendent conceded that it was not customary safe practice for winchmen to move cargo without knowing whether the hook-on men were in the clear (R. 148-149).

Due to lack of a signalman, the winchmen had to "automatically" coordinate their actions after the pipe was raised off the dock (R. 157). Strachan's superintendent immediately investigated the accident in line of duty (R. 146) and concluded that it had been caused by the winchmen's faulty coordination (R. 148). The superintendent prepared a contemporaneous safety program report recommending that similar accidents be prevented by having the longshoremen "be more careful" (R. 147-148).

When it appeared to one of the winchmen that the pipe might hit the shroud, he stopped his winch and held up his hand to signal the other winchman to stop the other winch (R. 159). The other winchman did not immediately stop the other winch, either because he did not and probably could not see the hand signal or because the other winch was defective (R. 177). Strachan's manager conceded that "it is one of these basic uniform safe practices for the winchmen not to give themselves their own signals" (R. 131).

When one end of the pipe hit the shroud, the other end kicked back (R. 160-161) and crushed Rawlinson between the pipe and the ship (R. 177).

After Strachan settled Rawlinson's Texas workmen's compensation claim, Rawlinson sued Royal in a state court and Royal removed to the District Court for Southern Texas because of diversity (R. 176). Royal then brought a F. R. Civ. P. 14(a) third-party action against Strachan for indemnity and settled Rawlinson's suit without prejudice to Royal's indemnity claim against Strachan (R. 176-177).

The District Court (Ingraham, J.) granted Strachan's motion to dismiss Royal's third-party complaint on the ground that, although Royal's claim for indemnity was valid under the doctrine of *Ryan Stevedoring Co.* v. *Pan-Atlantic Corp.*, 350 U. S. 124 (1956), "Texas says no." *Rawlinson* v. *Koninklyke Nederlandsche, etc.*, 197 F. Supp. 201, 204 (S. D. Tex. 1961). The Circuit Court reversed and remanded for trial, holding that Texas law did not and constitutionally could not bar Royal's maritime contract indemnity claim. *Koninklyke Nederlandsche, etc.* v. *Strachan Shipping Co.*, 301 F. 2d 741 (5 Cir. 1962), rehear. denied 304 F. 2d 545, cert. denied 371 U. S. 921.

Following trial of the indemnity action, the District Court submitted interrogatories to the jury for a F. R. Civ. P. 49(a) special verdict (R. 177). The jury found that:

—Royal reasonably settled Rawlinson's suit (R. 177). Strachan, which had acknowledged the reasonableness of the settlement amount (R. 137), conceded the conclusiveness of this finding (R. 167).

—The winch which was not immediately stopped was not unseaworthy and, although the winchman continued to operate the winch with the foreman's acquiescence after both of them knew that the winch was defective, this was not a contributing cause of the accident (R. 178) and Strachan did not negligently bring into play any defective condition of the winch (R. 180).

—Although the winchmen did not move the pipe without receiving a signal to do so (R. 179), Strachan's failure to provide one signalman to give all the necessary loading signals was a contributing cause of the accident (R. 178-179).

—Another contributing cause of the accident was movement of the pipe by the winchmen when they could not see whether Rawlinson was between the pipe and the ship (R. 179).

—Another contributing cause of the accident was the absence of a tag line on the pipe (R. 179-180).

—The winchmen raised the pipe in such manner as to create a danger that it would hit the shroud (R. 180).

—Rawlinson was contributorily negligent (R. 180).

The District Court (Ingraham, *J.*) denied Royal's motions for a directed verdict, judgment on the verdict, and judgment notwithstanding the verdict (R. 121) and directed entry of judgment for Strachan because the special verdict left the Court "in a state of confusion and doubt" (R. 168).

Royal appealed on the alternative grounds that it was entitled to judgment on the verdict, but that even if the verdict had been for Strachan, Royal's motions for a directed verdict or judgment notwithstanding the verdict should have been granted.

The Circuit Court reversed and remanded for another trial (R. 183) on the ground that the jury's answers to the interrogatories are irreconcilably inconsistent (R. 182).

REASONS FOR GRANTING THE WRIT

1. The special verdict is not irreconcilably inconsistent and the lower court's failure to harmonize the jury's answers violated the Seventh Amendment and is in conflict with controlling decisions of this Court.

In *Atlantic & Gulf Stevedores* v. *Ellerman Lines,* 369 U. S. 355 (1962) and *Gallick* v. *Baltimore & Ohio R. Co.,* 372 U. S. 108 (1963), the Court granted certiorari "to consider the question whether the decision below improperly invaded the jury's function", 372 U. S., p. 109, and reversed judgments which contravened special verdicts. In *Atlantic & Gulf Stevedores,* after quoting the Seventh Amendment prohibition that "no fact tried by a jury, shall be otherwise reexamined by any Court of the United States, than according to the rules of the common law", 361 U. S., p. 359, the Court held:

> "Where there is a view of the case that makes the jury's answers to special interrogatories consistent, they must be resolved that way. For a search for one possible view of the case which will make the jury's findings inconsistent results in a collision with the Seventh Amendment." 369 U. S., p. 364.

In *Gallick,* the Court emphasized:

> "• • • the duty of the courts to attempt to harmonize the answers, if it is possible under a fair reading of them: 'Where there is a view of the case that makes the jury's answers to special interrogatories consistent, they must be resolved that way.' *Atlantic & Gulf*

Stevedores, Inc. v. *Ellerman Lines, Ltd.*, 369 U. S. 355, 364. We therefore must attempt to reconcile the jury's findings, by exegesis if necessary, as in *Arnold* v. *Panhandle & S. F. R. Co.*, 353 U. S. 360; *McVey* v. *Phillips Co.*, 288 F. 2d 53 (C. A. 5th Cir.); *Morris* v. *Pennsylvania R. Co.*, 187 F. 2d 837 (C. A. 2d Cir.) (collecting authorities), before we are free to disregard the jury's special verdict and remand the case for a new trial." 372 U. S., p. 119.

Here, no such hermeneutic effort is required since the special verdict is entirely consistent.

Although the lower court was unable to reconcile the jury's findings that the winch was defective but not unseaworthy (R. 178, 182), identical findings were consistently made in *Drago* v. *A/S Inger*, 194 F. Supp. 398 (E. D. N. Y. 1961), aff'd 305 F. 2d 139, cert. denied 371 U. S. 925, where, in answering special interrogatories pertaining to the longshoreman's action against the shipowner, the jury found that the vessel, including the ship's winch, was not unseaworthy, 194 F. Supp., p. 400, and the trial judge, in making additional findings necessary for determination of the shipowner's indemnity claim against the stevedore, found that the winch was "defective", 305 F. 2d, p. 142, because of a missing safety pin, 194 F. Supp., p. 402. The trial judge explicitly recognized his obligation to "make additional findings of fact which must not be inconsistent with the findings expressed in the jury's answers to the interrogatories or necessarily implied in the jury's verdict", 194 F. Supp., p. 401, and the Circuit Court agreed that "the trial judge properly interpreted the jury's verdict and answers to the special interrogatories so as to prevent in-

consistency between the verdict and his disposition of the indemnity claim", 305 F. 2d, p. 141. The consistency of findings that a winch was defective but not unseaworthy results from application of the rule that seaworthiness "is not perfection, but reasonable fitness", *Mitchell* v. *Trawler Racer*, 362 U. S. 539, 550 (1960).

The lower court was also unable to reconcile the jury's findings that, although the winchmen did not move the pipe without receiving a signal to do so, Strachan's failure to provide one man to give all signals necessary to load the pipe was a contributing cause of the accident (R. 178-179, 182). These findings are entirely consistent with the undisputed testimony by Strachan's employees that, contrary to customary safe practices (R. 131-132), there was no signalman on duty while the pipe was being loaded (R. 150) and that after one of the hook-on men—not a signalman—motioned to the winchmen to raise the pipe off the dock (R. 156), the winchmen were then on their own and had to "automatically" coordinate their actions (R. 157) and give themselves their own signals, contrary to Safety Rule 14 (R. 119) and "basic uniform safe practices" (R. 131).

If the jury's answers to the interrogatories are not patently consistent, they certainly are not irreconcilably inconsistent and the lower court's contrary determination violates the Seventh Amendment and is in direct conflict with controlling decisions of this Court.

2. Certain of the jury's answers are entirely consistent, severable, and alone support judgment for Royal on the special verdict and failure to enter judgment for Royal on the verdict violated the Seventh Amendment, conflicts with decisions of other circuit courts, and raises an important, recurrent question of Federal practice which has not been, but should be, settled by this Court.

Even if the jury's answers to the interrogatories dealing with the winch and the signalman were irreconcilably inconsistent, the jury's findings that Royal reasonably settled Rawlinson's suit (R. 177); that a contributing cause of the accident was movement of the pipe by the winchmen when they could not see whether Rawlinson was between the pipe and the ship (R. 179); that another contributing cause was the failure to have a tag line on the pipe (R. 179-180); and that Rawlinson was contributorily negligent (R. 180) are entirely consistent and are severable from the answers pertaining to the winch and signalman.

Although this Court appears never to have passed upon this important and recurrent question of Federal practice, lower courts have held that if favorable answers to all of the special interrogatories are not essential to permit entry of judgment on the verdict, the ambiguously answered, or even unanswered, interrogatories should be ignored.

In *Minneapolis N. & S. Ry. Co.* v. *Skyway Aviation Corp.*, 32 F. R. D. 1 (D. Minn. 1963), aff'd 326 F. 2d 701, there was a claim and counterclaim for collision damage and the jury found that defendant's negligence was a proximate cause of the accident and that, although it could

not decide whether plaintiff was contributorily negligent, any negligence by plaintiff was not a proximate cause of the accident.

> "Since it appears to the Court that the answer to question No. 3 as to plaintiff's negligence was not essential to a resolution of the fact issues involved because the jury had decided by its answer to question No. 4 that even if there was negligence on the part of the plaintiff, such was not a proximate cause of the accident, the Court received the verdict and directed the entry of judgment for the plaintiff * * *." 32 F. R. D., p. 2.

In affirming, the Circuit Court held that:

> "* * * if the jury had answered the question [of plaintiff's contributory negligence] affirmatively, which the trial court pointed out was the most favorable answer defendant could have wished for, the same conclusion would have resulted by reason of the jury's unanimously finding that plaintiff's negligence did not constitute a proximate cause of the collision.
>
> "This was a proper case to invoke Rule 49(a) as it simplified the issues for the jury. The answers and the special verdict were not conflicting or inconsistent. The failure to agree on the unanswered interrogatory did not vitiate the otherwise unanimous verdict effectively disposing of the issues submitted." 326 F. 2d, p. 704.

Getz v. *Robinson*, 232 F. Supp. 763 (W. D. Pa. 1964) involved a similar situation except that the jury found that although plaintiff was contributorily negligent, his

negligence was not a proximate cause of the accident. The Court held that the jury's answers were consistent and, since there was no proximate cause, the finding of contributory negligence was "unnecessary and surplusage", 232 F. Supp., p. 767. Here, the jury's answers to the defective winch interrogatories are also "unnecessary and surplusage" because, although the jury found that the winchman continued to operate the winch after both he and the foreman knew it was defective, the jury found that this was not a contributing cause of the accident (R. 178) and that Strachan did not negligently bring the winch defect into play (R. 180).

In *Gulf Refining Co.* v. *Fetschan,* 130 F. 2d 129 (6 Cir. 1942), cert. denied 318 U. S. 764, plaintiff sued to recover damages resulting from noxious fumes and from flooding. The jury answered special interrogatories in favor of plaintiff on the fume damage and failed to answer any of the interrogatories dealing with the flood damage. The Court affirmed the judgment for fume damage on the ground that even if the jury had answered the flood damage questions in favor of defendant, plaintiff would still be entitled to recover for the fume damage, 130 F. 2d, p. 134.

Here, the jury found that Royal reasonably settled Rawlinson's suit and that Rawlinson was contributorily negligent (R. 177, 180). These two findings alone are sufficient to require entry of judgment on the verdict for Royal even if the jury had unambiguously answered all of the other interrogatories in a manner favorable to Strachan.

> "A ship may recover over against a stevedore for amounts paid in settlement of a personal injury claim

if the injury was caused by breach of the stevedore's warranty of workmanlike service. * * * The elements the ship must establish to recover indemnity from the stevedore are first that the settlement was reasonable under all the circumstances and second that the stevedore was guilty of a breach of the warranty of workmanlike service and has no defense against the shipowner's indemnity claim. * * * Both the jury and Judge Abruzzo found that negligence of the stevedore caused the injury. This was a breach of the warranty of workmanlike service. * * * It is probable that the negligence of the stevedore found by both triers was based solely on the actions of the injured longshoreman. This, however, does not preclude recovery over by the shipowner, but is simply a factor that would reduce the recovery of the injured plaintiff * * * and thus is to be considered only in determining the reasonableness of the settlement." *Damanti* v. *A/S Inger*, 314 F. 2d 395, 397, 399 (2 Cir. 1963), cert. denied 375 U. S. 834.

"Moreover, the plaintiff's own negligence * * * would be sufficient to charge the stevedore with breach of its warranty of workmanlike service." *Nicroli* v. *Den Norske Afrika, etc.*, 332 F. 2d 651, 656 (2 Cir. 1964).

"* * * the finding of contributory negligence established [the shipowner's] right to indemnity as a matter of law." *Mortensen* v. *A/S Glittre*, 348 F. 2d 383, 384 (2 Cir. 1965).

3. Royal's motions for a directed verdict or judgment notwithstanding the verdict should have been granted under circumstances which call for an exercise of the Court's power of supervision so as to obviate further litigation.

Even if the jury's answers were irreconcilably inconsistent, Royal's motions for a directed verdict or judgment notwithstanding the verdict should have been granted. The evidence, largely consisting of testimony and contemporaneous reports by Strachan's employees, conclusively established that, although Strachan should have loaded the pipe "without untoward incident" (R. 130), the accident was caused by Strachan's flagrant disregard of "basic uniform safe practices" (R. 131) and contract "General Safety Rules" (R. 118-119) and the failure of its longshoremen "to be more careful" (R. 147-148) amounting, as a matter of law, to breach of "the stevedore's obligation to perform with reasonable safety", *Italia Societa, etc.* v. *Oregon Stevedoring Co.*, 376 U. S. 315, 319 (1964).

If this case is remanded for another trial, under local practice it will be retried before the same Judge who erroneously granted Strachan's motion to dismiss Royal's claim, with consequent appeal and petition for certiorari, and erroneously entered judgment for Strachan on the special verdict, necessitating a second appeal and petition for certiorari. Another trial is almost bound to result in a third appeal and petition to this Court.

In *Gillespie* v. *U. S. Steel Corp.*, 379 U. S. 148, 153-154 (1964), the Court, motivated by a desire to save further litigation time and expense, granted certiorari to decide a question which, though "fundamental to the further con-

duct of the case", did not and could not finally resolve the case. Here, if any of the questions presented is answered in Royal's favor, that will finally dispose of this case without need or possibility of further litigation. These questions will never be more ripe for determination; indeed, another trial and appeal will tend to obscure them.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

WILLIAM M. KIMBALL
Counsel for Petitioner

APPENDIX A

Opinion Below

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 21622

ROYAL NETHERLANDS STEAMSHIP COMPANY,

Appellant,

—versus—

STRACHAN SHIPPING COMPANY, *et al.*,

Appellees.

STRACHAN SHIPPING COMPANY,

Appellant,

—versus—

ROYAL NETHERLANDS STEAMSHIP COMPANY,

Appellee.

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

(June 27, 1966.)

Before:

JONES and THORNBERRY, *Circuit Judges,*
and SLOAN, *District Judge.*

JONES, *Circuit Judge*: B. A. Rawlinson, a longshoreman employed by the appellee, Strachan Shipping Company, was injured while participating in the loading of a vessel of the appellant, Royal Netherlands Steamship Company, at a dock in Houston, Texas. He was crushed between a load of pipe, which was being raised from the dock, and the vessel. Strachan's insurance carrier settled with Rawlinson on his Texas workmen's compensation claim. He then sued Royal Netherlands in a state court, claiming unseaworthiness of the vessel and negligence of its owner. Royal Netherlands removed the case to the Federal court, settled with Rawlinson, and filed a third-party complaint against Strachan seeking indemnity. The district court entered a summary judgment for Strachan on the ground that the discharge of its state compensation liability discharged it from all liability arising out of Rawlinson's injury. *Rawlinson* v. *Koninklyke Nederlandsche Stoomboot Maalschappy, N.V.*, 197 F. Supp. 201. This court reversed, holding that under the Ryan doctrine,[1] a state rule of workmen's compensation law cannot prevent a shipowner from enforcing a contractual right of indemnity against a stevedore. *Koninklyke Nederlandsche Stoomboot Maalschappy, N.V.* v. *Strachan Shipping Company*, 301 F. 2d 741, reh. den. 304 F. 2d 545.

The injuries of Rawlinson were sustained while he was engaged, with others, in loading a cargo of pipe on the SS Mentor, owned by Royal Netherlands. A length of pipe was being raised from the dock to the ship by two winches. It appeared to C. E. Hartley, one of Strachan's winchmen, that one end of the pipe might strike a shroud.

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[1] Ryan Stevedoring Co. v. Pan-Atlantic Corporation, 350 U. S. 124, 76 S. Ct. 232, 100 L. Ed. 133; Weyerhaeuser Steamship Co. v. Nacirema Operating Co., 355 U. S. 563, 78 S. Ct. 438, 2 L. Ed. 2d 491.

He stopped his winch and signaled W. E. Hedigar, Strachan's other winchman, to stop his winch. There is a dispute as to whether Hedigar missed the signal and did not attempt to stop the winch, or the winch was defective and did not respond to the winchman's effort to stop it. The winch continued to operate causing the low end of the pipe to swing in against the ship. Rawlinson was caught between the pipe and the ship and the resulting injuries initiated this litigation. Rawlinson's action against Royal Netherlands, in which he asserted both negligence and unseaworthiness, was settled by the payment of $20,000 by Royal Netherlands. It reserved the right to seek indemnity from Strachan. As has been noted, its right to do so was established on the prior appeal.

At the conclusion of the trial the court submitted special interrogatories under Rule 49(a), Fed. Rules Civ. Proc. 28 U. S. C. A. at the request of Royal Netherlands and in the form requested by it. Objections to the interrogatories made by Strachan were overruled and interrogatories requested by Strachan were refused. The questions propounded and the answers returned are as follows:

1. Was it reasonable for Royal to settle Mr. Rawlinson's suit?

You will answer "Yes" or "No".

Answer: Yes

2. Was the high boom winch unseaworthy?

You will answer "Yes" or "No".

Answer: No.

3. (a) Did the high boom winchman continue to operate the winch after he knew that the winch was defective?

Answer: "Yes" or "No".

Answer: Yes

(b) If so, was this one of the contributing causes of the accident?

You will answer "Yes" or "No".

Answer: No

4. (a) Did the gang foreman fail to stop the high boom winchman from continuing to operate the winch after the gang foreman knew or should have known that the winch was defective?

You will answer "Yes" or "No".

Answer: Yes

(b) If so, was this one of the contributing causes of the accident?

You will answer "Yes" or "No".

Answer: No

5. (a) Should Strachan have provided one signalman to give all signals necessary to get the pipe which struck Mr. Rawlinson onto the ship?

You will answer "Yes" or "No".

Answer: Yes

(b) If so, was the failure to provide the signalman one of the contributing causes of the accident?

You will answer "Yes" or "No".

Answer: Yes

6. (a) Did either the outrigger winchman or the high boom winchman move the pipe which struck Mr. Rawlinson without receiving a signal to do so?

You will answer "Yes" or "No".

Answer: "No".

(b) If so, was this one of the contributing causes of the accident?

You will answer "Yes" or "No".

Answer: "No".

7. (a) Did either the outrigger or high boom winchman move the pipe which struck Mr. Rawlinson without being able to see whether or not Mr. Rawlinson was between the pipe and the ship?

You will answer "Yes" or "No".

Answer: "Yes".

(b) If so, was this one of the contributing causes of the accident?

You will answer "Yes" or "No".

Answer: "Yes".

8. (a) Was there a tag line on the pipe which struck Mr. Rawlinson?

You will answer "Yes" or "No".

Answer: "No".

(b) If not, was this one of the contributing causes of the accident?

You will answer "Yes" or "No".

Answer: "Yes".

9. Was Strachan's failure to use a double sling to load the pipe which struck Mr. Rawlinson one of the contributing causes of the accident?

You will answer "Yes" or "No".

Answer: "No".

10. Did either the outrigger or high boom winchman raise the pipe which struck Mr. Rawlinson in such a manner that there was danger that the pipe would strike the shroud?

You will answer "Yes" or "No".

Answer: Yes

11. (a) Did Strachan negligently bring into play any defective condition of the high boom winch?

You will answer "Yes" or "No".
Answer: No

12. Was a contributing cause of the accident the failure of Mr. Rawlinson to exercise reasonable care for his own safety?
You will answer "Yes" or "No".
Answer: Yes

After the jury had retired, a note from the jury was sent in, making this inquiry:

> "Some questions that follow question No. 2 seem to assume that question No. 2 be answered in the affirmative. However, if No. 2 is answered in the negative, answers to some associated questions seem to be contradictory. Please clarify."

After some discussion, and over the objection of Strachan, the court gave this supplemental instruction:

> "You are instructed to answer each question individually on the basis of the evidence and without regard to the effect which any answer may have upon the judgment to be entered by the court."

Royal Netherlands and Strachan each moved for judgment on the verdict. The motion of Strachan was granted. Royal Netherlands has appealed, and on appeal contends that the cause of the longshoreman's injury was attributable to the stevedore and its employees. It insists that the jury verdict made findings which required a judgment against Strachan, the stevedore. While insisting upon the correctness of the judgment and claiming that the verdict required the entry of the judgment for it, Strachan has attempted to take what it has called a "conditional and pro-

tective cross-appeal. In its support of this cross-appeal it urges that the district court's charge and interrogatories are erroneous. But by a sort of Hudibrastic reasoning, Strachan argues that because Royal Netherlands prepared the instructions and interrogatories it is estopped from challenging the court's judgment.

The framing of questions in such form as to anticipate or assume particular answers to prior questions, coupled with the court's instruction, given in response to an inquiry by the jury, that each question be answered without regard to the effect of any answer upon the court's judgment, undoubtedly created confusion in the minds of the jurors. This confusion, no doubt, caused the inconsistency and conflicts in the jury's responses to the questions as submitted. The jury found that the high boom winch was not unseaworthy but was required to assume that it was defective. The jury found that Strachan should have provided a signalman and its failure to do so was a contributing cause of the accident, but that the winchmen had not moved the pipe without signals. Other comparisons might be made. The inconsistencies and conflicts cannot be reconciled.

Where the answers of the jury, upon which the court's judgment depends, are so ambiguous, or so conflicting and inconsistent that they cannot be reconciled, a special verdict will not support a judgment and the cause must be reversed for a new trial. *Martin* v. *Gulf States Utilities Company,* 5th Cir. 1965, 344 F. 2d 34; *R. B. Company* v. *Aetna Insurance Company,* 5th Cir. 1962, 299 F. 2d 753; *Missouri Pacific Railroad Company* v. *Salazar,* 5th Cir. 1958, 254 F. 2d 847; *Mounger* v. *Wells,* 5th Cir. 1929, 30 F. 2d 521. Such is the case here. The judgment of the district court is reversed and the cause remanded for a new trial. The cross-appeal falls with the reversal on the main appeal.

REVERSED AND REMANDED.

APPENDIX B

Judgment Below

UNITED STATES COURT OF APPEALS,

FOR THE FIFTH CIRCUIT

OCTOBER TERM, 1965

No. 21622

D. C. Docket No. 11954—Admirality

ROYAL NETHERLANDS STEAMSHIP COMPANY,

Appellant,

—versus—

STRACHAN SHIPPING COMPANY, *et al.*,

Appellees.

STRACHAN SHIPPING COMPANY,

Appellant,

—versus—

ROYAL NETHERLANDS STEAMSHIP COMPANY,

Appellee.

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

Before:

JONES and THORNBERRY, *Circuit Judges,*
and SLOAN, *District Judge.*

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Texas, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and it is hereby remanded to the said District Court in accordance with the opinion of this Court;

It is further ordered and adjudged that the appellee, Strachan Shipping Company, be condemned to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

June 27, 1966

Issued as Mandate:

APPENDIX C

Order Denying Rehearing

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 21622

ROYAL NETHERLANDS STEAMSHIP COMPANY,

Appellant,

—versus—

STRACHAN SHIPPING COMPANY, *et al.*,

Appellees.

STRACHAN SHIPPING COMPANY,

Appellant,

—versus—

ROYAL NETHERLANDS STEAMSHIP COMPANY,

Appellee.

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

(August 5, 1966)

Before:

JONES and THORNBERRY, *Circuit Judges,*
and SLOAN, *District Judge.*

PER CURIAM:

IT IS ORDERED That the petition for rehearing in the above entitled and numbered cause be, and the same is hereby DENIED.